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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,536	05/18/2005	Zion Azar	127/04496	6013
44909 PRTSI P.O. Box 16446 Arlington, VA 22215	7590 05/21/2008		EXAMINER RALIS, STEPHEN J	
			ART UNIT 3742	PAPER NUMBER
			MAIL DATE 05/21/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/535,536

Applicant(s)

AZAR ET AL.

Examiner

Stephen J. Ralis

Art Unit

3742

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 02 April 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/TU B HOANG/
Supervisory Patent Examiner, Art Unit 3742

/Stephen J Ralis/
Examiner, Art Unit 3742

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments have been fully considered but they are not persuasive.

With respect to applicant's argument that Kelman does not anticipate the limitation of "collecting the hair cuttings from the skin of the user with an electrostatically charged element", the examiner respectfully disagrees. Kelman explicitly discloses the hair being cut from the skin by the elongated heated member (laser 18). The hair being cut derives from the skin and the hair being collected and electrostatically charged is the same hair that was cut from the skin (page 6-7). Therefore since the Kelman discloses the hair being cut by laser beam from skin and collected via the electrostatically charged element, Kelman fully meets "collecting the hair cuttings from the skin of the user with an electrostatically charged element" given its broadest reasonable interpretation.

With respect to applicant's argument that new rejection of claim 16 is improper, the examiner respectfully disagrees. While the examiner gives the claim, as recited, its broadest reasonable interpretation, an examiner cannot be expected to foresee whether or how an applicant will amend a claim to overcome a rejection except in very limited circumstances (e.g., where the examiner suggests how applicant can overcome a rejection under 35 U.S.C. 112, second paragraph) (see MPEP 706.07(a)). Therefore, the rejection is maintained and deemed proper due to the amendment.

With respect to applicant's argument that laser beam (18) is not an elongated heated element and, furthermore, is not heated and produces heat, due to the physics of the laser beam and how it cuts, the examiner disagrees. Kelman disclose a laser beam (18) that is used to cut hair (Abstract). A laser beam is an elongated beam of light that is amplified by stimulated emission of radiation. Kelman further disclose the hair being vaporized or carbonized at the location of impingement of the laser beam (18) thereon (page 5, lines 18-24). To carbonize hair by a laser beam (18) would involve a burning/heating since the laser beam (18) light is not carbonizing by a chemical process or by fossilization. Furthermore, the laser beam (18) carbonizes the hair due to the heat created by the energy distribution to the higher density properties of the hair compared to its surrounding air. The density of the air surrounding the laser beam (18), which in essence is part of the laser beam (18) is heated as well, due to particle collision with air, therefore, the laser beam (18) would be hot compared to the air surrounding the device, and in return heated. In addition, the laser beam (18), with its inclusive surrounding air, is heated and heated to a temperature sufficient to cut hair or the hair would not be cut. Therefore, Kelman fully meets "a heated elongate element heated to a temperature sufficient to cut hair" given its broadest reasonable interpretation.

With respect to applicant's argument that there is no equivalency teaching in the context of heating hair to a temperature high enough to destroy it, the examiner respectfully disagrees. Kelman explicitly disclose laser beam (18) cutting hair. Iderosa explicitly teaches the equivalency of a linearly-scanned laser beam and a metallic heating element in the art of a heating element sufficient to soften hair (Abstract). If the laser beam can be used to cut and soften hair, it is obvious to one of ordinary skill in the art that a metallic heating element that can be heated to a temperature to soften hair can be heated to a temperature to cut hair. Therefore, the examiner maintains the equivalency of a linearly-scanned laser beam and a metallic heating element in the art of a heating element sufficient to soften hair as well as cut hair established and further maintains the rejection.

In response to applicant's argument that the combination would not replace the electrostatically charged element of Kelman but rather add the electrostatically charged element of Bermingham, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Kelman explicitly discloses a device for collecting loose hairs that may comprise an electrostatic apparatus (page 6 -7). Kelman does not disclose any particular structure or limitations in regards to the electrostatic device, only that it may be utilized.

Bermingham explicitly teaches a shear plate (14) constructed of a dielectric material that is adapted to develop a static electrical charge by friction, a charge is developed and retained therein on being brought into contact with the skin (column 1, lines 14-20; column 2, lines 26-55). Bermingham further teaches the advantage of such a configuration provides an attracting force for the hairs to be cut and tends to set them into optimum cutting operative movement, thereby improving the operational efficiency of the hair cutting device.

Clearly since Kelman discloses the use of an electrostatic apparatus for collecting loose hairs and Bermingham teaches a particular desired structure and use of an electrostatic device to collect hair that develops a static charge due to the characteristic of the material used in the device, it would have been obvious to one of ordinary skill in the art to replace/improve, not add, the broadly defined electrostatic apparatus of Kelman with the electrostatically charged apparatus of Bermingham in order to provide an attracting force for the hairs to be cut and tends to set them into optimum cutting operative movement, thereby improving the operational efficiency of the hair cutting device. Therefore, the examiner maintains that a prima facie case of obviousness has been established and further maintains the rejection.